

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Sonya Sofield

**Date Application filed with the Town Clerk:** February 23, 2005

**Nature of request:** To renew Special Permit ZBA FY2003-00015 for a flag lot under Section 6.3 of the Zoning Bylaw, at 1467 South East Street (Map 23D, Parcel 57, R-O Zone)

**Legal notice:** Published on March 9<sup>th</sup> and 16<sup>th</sup>, 2005 in the Daily Hampshire Gazette and sent to abutters on March 8, 2005.

**Board members:** Tom Simpson, Ted Rising, Susan Pynchon

**Submissions:** The applicant submitted:

- A site plan of the property prepared by Almer Huntley & Associates, dated 7/22/74
- A topographical plan of the site, prepared by Almer Huntley & Associates, dated 7/17/74
- A copy of the deed for the property granting it to Sonya Sofield on 2/14/95. The deed reserves a right-of-way to the "pole" portion of the Sofield property to the easterly abutters, Herbert and Harriet Hutchings. It also restricts the height of any structure built on the property to no higher an elevation than 102 feet above sea level.

The zoning staff assistant submitted a memorandum to the Board, dated 3/18/05. The memo lists the six previous special permits issued by the ZBA for this flag lot, and details about the dimensions and zoning restrictions on the lot.

**Site Visit:** March 22, 2005

Due to a heavy snow cover, the Board could not visit the site. From the road, the Board observed:

- The hillside on which the flag lot is located, with approximately a 40-foot rise from the road to the rear of the property
- The conservation land, including Mt. Pollux to the north
- The area surrounding the lot under consideration, between South East and Middle Streets, which contains single family homes on large parcels of land

**Public Hearing:** March 24, 2005

ZBA Chairperson Tom Simpson disclosed that he and Sonya Sofield had served on previous ZBA panels together in the past. Ms. Sofield has not been a member of the Board since 2003.

The applicant stated that six Special Permits have been given for this flag lot since 1974. There has been no construction on the site and therefore the permit must be renewed every two years. The same site and elevation plans have been submitted since the initial permit in 1974. Although no change has been made to her property, the surrounding area has been developed since 1974.

The applicant's parcel may be the only remaining buildable lot.

The dimensions of the applicant's lot are:

- The parcel is 4.04 acres
- The buildable area is approximately 3.83 acres. According to Section 6.3 of the Zoning Bylaw, the building area required for a flag lot in an R-O district is 60,000 square feet, or 1.4 acres.
- The access pole is 228.63 feet long and 43 feet wide. The maximum allowed in Bylaw Section 6.33 for the pole is 400 feet, and the minimum frontage width is 40 feet.

The Board observed that the build-up in the surrounding area has included construction of homes on the top of the very hill that Ms. Sofield's previous permits have restricted at that elevation. These new homes are visible from Mt. Pollux and other parts of Amherst. The Board asked Ms. Sofield about the building restriction – if it should be removed from the Special Permit. She responded that perhaps so for future permits, but she that it should be included at present

The applicant asked about zoning staff assistant memo concerning the slope of a future driveway. The previous permit stated in the decision that the driveway would not exceed 5% slope within thirty feet of the property line at the street, but the memo state fifty feet for the 5% grade.

The Board pointed out that Section 7.702 of the Bylaw states that the driveway for a flag lot shall not exceed 5% grade within fifty (50) feet of the intersection of the driveway and the paved section of the street. Ms. Sofield replied that this may present some difficulty in design of the driveway.

Ms. Sofield asked about simply building a gazebo for herself, without utilities or a driveway. She walks to this parcel from her own property regularly, and has considered building a small structure there for "rest and relaxation". Bonnie Weeks, Building Commissioner, stated that with that sort of simple structure, a new driveway would not be needed.

The Board asked about testing for arsenic around the apples trees when a residence is constructed. The petitioner stated that she agreed such testing should be conducted. Given that trees have not been sprayed since she's owned the property, the chance of contaminated land from spraying may be slight, though worth checking.

The Board noted that the access pole is an Aquifer Recharge Protection (ARP) overlay district. Section 3.254 of the Bylaw lists some restrictions in this district – sodium chloride for ice control, fertilizers, pesticides, or other hazardous leachable materials. The petitioner said that she is against the use of all such materials.

The petitioner stated that the property can be connected to both Town water and sewer lines. The sewer line had been recently extended along South East Street.

Ted Rising moved to close the hearing. Susan Pynchon seconded the motion. The vote was unanimous.

#### **Public Meeting:**

The Board noted that nothing has changed to the lot since the original special permit was granted in 1974. They also agreed that, even though other houses have been built on top of the hill, a

restriction on a hilltop residence is reasonable in this case. Ample land remains below the crest of the hill for any future construction.

**Findings:**

The Board finds under Section 6.3 of the Zoning Bylaw, Flag Lots, that:

6.32 – The buildable area, exclusive of the access strip, is more than double the minimum lot area required in an R-O Zoning District. The building area is approximately 3.83 acres. The Bylaw requires 60,000 square feet for a flag lot in this district, less than 1.5 acres.

6.33 – The access pole is 228.63 feet long and 43 feet wide. The maximum length allowed is 400 feet for the pole and the minimum width is 40 feet.

6.34 – The width of that portion of the lot where the principal building is to be constructed is 388 feet, which exceeds the 150-foot length required for street frontage in an R-O zoning district.

6.35 – The building area, 3.83 acres, is capable of containing a circle whose diameter is 150 feet, which is the frontage requirement in an R-O district.

6.37 & 7.702 – The driveway within the access strip can be adequately drained and can be designed to not exceed 5% grade within fifty (50) feet of the property line at the street. This will become a condition of this permit.

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, since there are many single family houses on large lots in the area.

10.10.383 & 10.384 – The proposal will not be an inconvenience or hazard to abutters since flag lots are common in the area. Appropriate facilities can be provided at this location.

10.385 & 10.387 – The proposal protects adjoining premises against visually offensive structures and safe vehicular movement given the conditions of this permit. That is, any residential structure is restricted to no higher than an elevation of 102 feet above sea level, and the driveway shall be graded for safe entry or exit from the site.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw since the proposal will conserve a large portion of the hill and will promote the safety/convenience of the residents of Amherst.

**Zoning Board Decision:**

Susan Pynchon moved to approve the petition, with conditions. Ted Rising seconded the motion.

For all of the reasons stated above, the Board VOTED to APPROVE the renewal of Special Permit ZBA FY2003-00015 to Sonya Sofield for a flag lot under Section 6.3 of the Zoning Bylaw, at 1467 South East Street (Map 23D, Parcel 57, R-O Zone), with conditions.

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TOM SIMPSON                      TED RISING                      SUSAN PYNCHON  
FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Sonya Sofield to renew Special Permit ZBA FY2003-00015 for a flag lot under Section 6.3 of the Zoning Bylaw, at 1467 South East Street (Map 23D, Parcel 57, R-O Zone), subject to the following conditions:

1. The following building restriction shall conform to that recited in the 1995 deed:  
"The highest point of the roof of any structure built upon the land ...shall not exceed an elevation of 102 feet".
2. Prior to issuance of building permit for a residence, the following shall be submitted to the Zoning Board of Appeals for its review and approval at a business meeting:
  - A final revised site plan, including a grading and drainage plan, siting of the residence and outbuildings, sit and building lighting and a plan of the driveway indicating grading and materials.
  - The soil in the vicinity of the construction area shall be tested for arsenic. The test results and a plan showing the extent of the area tested and sampling locations shall be submitted to the Board and filed in the ZBA office.
3. The siting of the house shall conform to Sections 6.34 and 6.35 of the Bylaw. That is, the building shall be constructed in the building area capable of containing a circle whose diameter is equal or greater than 150 feet.
4. The drainage plan and driveway plan must be submitted to and approved by the Town Engineer prior to submittal to the ZBA
5. The ARP restrictions found in Section 3.254 of the Bylaw shall be observed on the access pole section of the property. That is, sodium chloride, fertilizers, pesticides and other hazardous leachable materials shall not be used.
6. This permit shall expire two years after filing with the Town Clerk unless substantial construction has commenced within that period.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE

